



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **SOUTHWEST REGIONAL OFFICE**

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Michael D. Overstreet  
Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO**

**Dickenson - Russell Coal Company, LLC / Moss #3 Prep Plant  
Registration No. 10235**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301, 1307, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and Dickenson - Russell Coal Company, LLC for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Dickenson - Russell Coal Company, LLC / Moss #3 Prep Plant, St. Rte. 615 located in Clinchfield / Russell County, Virginia.

**SECTION C: Findings of Facts and Conclusions of Law of the Board**

1. On 7-2-07, a Consent Order was effective with a civil charge of \$11,376.56 due within 30 days of the effective date of the Order. The deadline for payment was 8-1-07. Payment was made 9-27-07
2. On September 20, 2007 sent a Notice of Violation Letter (NOV No. 9-4-SWRO-2007) to Dickenson-Russell Coal Company, LLC, informing the Company that DEQ had reason to believe that the violation referenced in Section C.1. had occurred.
3. The following regulations may be applicable in part or whole to the above listed permit deficiencies : 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits..."

**SECTION D: Agreement and Order**

1. By virtue of the authority granted it pursuant to Va. Code §§ 10.1 – 1309 and 10.1-1316 and upon consideration of Va. Code § 10.1 – 1186.2, the Board orders Dickenson - Russell Coal Company, LLC and Dickenson - Russell Coal Company, LLC voluntarily agrees, to a civil charge of \$1,962.12 in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The payment shall include Dickenson - Russell Coal Company, LLC's Federal ID number and shall identify that payment is being made as a result of this Order. The payment shall be made within 30 days of the effective date of this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Dickenson - Russell Coal Company, LLC for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Stationary Source Permit to Construct and Operate Permit dated April 8, 2005.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Dickenson - Russell Coal Company, LLC as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

4. By entering into this Order, Dickenson-Russell Coal Company, LLC admits the jurisdictional allegations, but does not admit factual findings, or conclusions of law contained herein. For purposes of this Order and subsequent actions with respect to this Order, Dickenson-Russell Coal Company, LLC agrees not to challenge the jurisdictional allegations.
  5. Dickenson - Russell Coal Company, LLC consents to venue in the Circuit Court of Russell County for any civil action taken to enforce the terms of this Order.
  6. Dickenson - Russell Coal Company, LLC declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 et seq., and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
  7. Failure by Dickenson - Russell Coal Company, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
  8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
  9. Dickenson - Russell Coal Company, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Dickenson - Russell Coal Company, LLC must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Dickenson - Russell Coal Company, LLC shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
    - a. the reasons for the delay or noncompliance;
    - b. the projected duration of such delay or noncompliance;
    - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
    - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.
- Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.
10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

11. This Order shall become effective upon execution by both the Director or his designee and Dickenson - Russell Coal Company, LLC. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Dickenson - Russell Coal Company, LLC. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Dickenson - Russell Coal Company, LLC from its obligation imposed in this Order, shall not operate to Dickenson - Russell Coal Company, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

13. By its signature below, Dickenson - Russell Coal Company, LLC voluntarily agrees to the issuance of this Order.

And it is ORDERED this 14<sup>th</sup> day of November, 2007

for Michael D. Overstreet  
Michael D. Overstreet, Regional Director  
Department of Environmental Quality

Dickenson - Russell Coal Company, LLC voluntarily agrees to the issuance of this Order.

Lawrence S. Smith  
Lawrence S. Smith  
Authorized Agent  
Dickenson - Russell Coal Company, LLC  
Date: 11-12-07

Commonwealth of Virginia

City/County of Wise

The foregoing document was signed and acknowledged before me this 12<sup>th</sup> day of  
November, 2007 by Lawrence S. Smith on behalf of

Dickenson - Russell Coal Company, LLC

Date: 11/12/07

Karis J. Davidson  
Notary Public

My commission expires: 1/31/08

